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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 553

[Docket No. USA-2018-HQ-0001]

RIN 0702-AA80

Army Cemeteries

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is finalizing its regulation for the development, operation, maintenance, and administration of the Army Cemeteries. The revisions include changes in management and a name change to the Army National Military Cemeteries. The rule also adopts modifications suggested by the Department of the Army Inspector General and approved by the Secretary of the Army, as well as implementing changes in interment eligibility due to statute.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Riddle, Army National Military Cemeteries, 703-614-6219.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

I. Purpose of the Regulatory Action

- a. This final rule modifies the Department of the Army's (DA) regulation governing

Army Cemeteries by finalizing the proposed rule (83 FR 53412) without change. Army Cemeteries consist of Arlington National Cemetery, the U.S. Soldiers' and Airmen's Home National Cemetery, twenty-five Army post cemeteries, the West Point Post Cemetery, and the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth. The rule revises the current part as 'subpart A'(Army National Military Cemeteries), makes corrections and additions to subpart A, and adds subpart B (Army Post Cemeteries) to further reflect changes in the management structure of the Army National Military Cemeteries created by Army General Orders 2014-74 (<https://armypubs.army.mil/ProductMaps/PubForm/Details.aspx?PUBNO=DAGO+2014-74>) and provisions of an April 17, 2012 Secretary of the Army Decision Memorandum.

b. The legal authorities for this regulatory action include Public Law 93-43 Stat. 87, 10 U.S.C. 3013, and 38 U.S.C. 2411. Public Law 93-43 Stat 87, also known as the National Cemeteries Act of 1973, contains a clause in Section 7(b)(2) that exempts the Secretary of the Army from the provisions of the act with respect to those cemeteries that remained under the control of the Army. Title 10 U.S.C. 3013 governs the appointment of the Secretary of the Army and the responsibilities of his position to include the formulation of policies and programs, which apply to Army Cemeteries. Title 38 U.S.C. 2411 contains further descriptions of persons convicted of capital crimes.

II. Summary of the Major Provisions

Section 553.12, "Eligibility for interment at Arlington National Cemetery", clarifies certain dependent eligibility criteria.

Section 553.28, "Private headstones and markers", clarifies private headstone and marker approval policies at the Army National Military Cemeteries.

Section 553.36, "Definitions", provides the definitions of terms used throughout the final

rule.

Section 553.37, “Purpose”, establishes eligibility for interment and inurnment in the twenty-five Army post cemeteries, the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth, KS, and the United States Military Academy Cemetery at West Point, NY.

Section 553.38, “Statutory authorities”, cites relevant sections of United States Code applicable to Army Post Cemeteries including Public Law 93-43 Stat 87, 10 U.S.C. 985, 1481, 1482, 3013, and 38 U.S.C. 2411.

Section 553.39, “Scope and applicability”, establishes the applicability of this part and not on the applicability of a separate internal Army regulation.

Section 553.40, “Assignment of gravesites or niches”, establishes policies regarding the assignment of gravesites or niches.

Section 553.41, “Proof of Eligibility”, establishes the requirements for family members to provide necessary documentation needed to verify veterans and their family members are eligible for interment or inurnment in Army post cemeteries.

Section 553.42, “General rules governing eligibility for interment or inurnment in Army Post Cemeteries”, establishes the general rules that apply to Army post cemeteries.

Section 553.43, “Eligibility for interment and inurnment in Army Post Cemeteries”, established for the twenty-five Army cemeteries on various active or former installations which excludes the post cemetery at West Point, NY and the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth, KS.

Section 553.44, “Eligibility for interment and inurnment in the West Point Post Cemetery”, is established for the post cemetery at West Point, NY.

Section 553.45, “Eligibility for interment in U.S. Disciplinary Barracks Cemetery at Fort

Leavenworth”, is established for the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth, KS.

Section 553.46, “Ineligibility for interment, inurnment or memorialization in an Army Post Cemetery”, clarifies those individuals who are ineligible for interments, inurnments and memorialization. This language is also to clarify the ineligibility of a former spouse whose marriage to the primarily eligible person ended in divorce, to clarify the termination of a spouse’s derivative eligibility for interment in a cemetery upon the remarriage of the primarily eligible spouse, to forbid the interment or inurnment of persons convicted of certain crimes, to forbid the interment or inurnment of persons who died on active duty under certain circumstances, and to govern how animal remains unintentionally comingled with human remains will be interred or inurned.

Section 553.47, “Prohibition of interment, inurnment, or memorialization in an Army Cemetery of persons who have committed certain crimes”, is added to implement 10 U.S.C. 985 and 38 U.S.C. 2411, which prohibits the interment, inurnment, or memorialization in any military cemetery of an individual who has been convicted of a Federal or state capital crime or who committed a Federal or state capital crime but was not convicted of such crime because the person was not available for trial due to death or flight to avoid prosecution. Definitions of the terms Federal capital crime and state capital crime are in § 553.36.

Section 553.48, “Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution”, is added to implement 10 U.S.C. 985 and 38 U.S.C. 2411, which prohibit the interment, inurnment, or memorialization in any military cemetery of an individual who has been convicted of a Federal or state capital crime, or who committed a Federal or state capital crime but was not convicted of such crime

because the person was not available for trial due to death or flight to avoid prosecution.

Section 553.49, “Exceptions to policies for interment or inurnment at Army Post Cemeteries”, establishes the authorities for granting exceptions and method by which exceptions can be requested.

III. Comments and Responses

The proposed rule was published in the **Federal Register** on October 23, 2018 (83 FR 53412, FR Doc. 2018-22968) for a 60-day comment period. The Department of the Army received four comments from four individuals. This section addresses the public comments.

Two of the comments expressed support for this final rule, most notably in regards to the responsibilities of the Cemetery Responsible Official and detailed proof of eligibility. The Department of the Army appreciates the commenters’ support for this regulation.

One comment questioned the perceived lack of an adjudicatory appeals process for eligibility based upon discharge rating as addressed in §§553.11 through 553.19. Contrary to the assertion that a formal adjudicatory appeals process for eligibility due to military discharge rating does not exist, the Department of Defense maintains that the Board of Correction of Military Records for each branch of service serves as the highest level of administrative review to appeal and correct errors or injustices in military records. If the military discharge document or any other military record renders the veteran ineligible, that record may be appealed to the Discharge Review Board or the Board for Correction of Military Records. This board provides the service member or veteran a method for due process required by law. If the military discharge document or any other military record renders the veteran ineligible, proof that the veteran's military record has been corrected and adjudicated by the Board of Correction of Military Records or Discharge Review Board is required. Department of the Army cemeteries

are places that honor the service and sacrifice of those who served our Country in uniform honorably. Requiring that the service member or veteran have a certificate of honorable service or honorable discharge is the method chosen by the Agency to maintain the dignity and honor of these cemeteries. No changes were made to the rule as a result of this comment.

Another comment questioned the fairness of the cancellation of reservations made prior to May 1, 1975, when a derivatively eligible individual remarries after the death of the primary eligible service member. When a derivatively eligible individual remarries after the death of the primary eligible service member, the eligibility for burial of a derivatively eligible individual is based solely upon the relationship with the primarily eligible service member. Once a derivatively eligible spouse remarries the prior relationship is superseded by the new legal association which terminates the derivative eligibility for burial. Therefore, maintaining the additional gravesite is often unnecessary and results in the waste of an available gravesite in cemeteries which are all limited on space. Further, at their time of need, the surviving spouse could request an exception to be buried in the same grave as their former spouse. No changes were made to the rule as a result of this comment.

IV. Expected Cost Savings of this Rule

This rule will reduce a burden to the public by saving time to the regulated community, primarily legal assistants and veterans, who now have to currently search for the appropriate eligibility criteria in the current Code of Federal Regulations (CFR), a West Point Regulation, and an outdated Army Regulation. With these revisions all Army cemetery eligibility requirements will be contained in one regulation which is the publicly-accessible CFR. DA estimates the consolidation of eligibility criteria into a single authoritative source will save those referring to the CFR for guidance approximately 30 minutes of research, review, and compliance

time. DA cemetery eligibility subject matter experts estimate that 20% of Army cemetery eligibility research involves consultation of the CFR or other Army regulations by legal assistants and 20% consultation by veterans. This results in a total of 40% of Army cemetery eligibility criteria involving consultation of the CFR and the other Army regulations. For purposes of estimating opportunity costs, DA subject matter experts deemed it reasonable to use the average of a legal assistant's mean hourly wage (\$25.57/hour), as informed by the 2016 Bureau of Labor and Statistics, and the 2016 U.S. Census Bureau, American Community Survey for 2015 reported annual veteran income of \$56,978.50. This annum income for veterans divided by 2,080 annual work hours yields an average veteran hourly wage (\$27.39/hour) to approximate an hourly wage for an average eligibility researcher. That rate is \$26.48/hour.

As there was an average of 7,600 burials in Army installations in 2016 for which DA cemetery eligibility subject matter experts estimate that 40% involve eligibility research by legal assistants or veterans, the impacted population would be 3,040 ($7,600 * 0.40$). Therefore, 3,040 impacted burials with an estimated savings of 30 minutes per eligibility research at average researcher hourly rate of \$26.48 results in a savings to the public of \$40,249.60 ($7,600 * 0.40 * 30 \text{ mins} * \26.48) annually.

B. Regulatory Flexibility Act

The Army has determined that the Regulatory Flexibility Act does not apply because the rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Army has determined that the Unfunded Mandates Reform Act does not apply because the rule does not include a mandate that may result in estimated costs to State, local, or

tribal governments in the aggregate, or the private sector, of \$100 million or more.

D. National Environmental Policy Act

Neither an environmental analysis nor an environmental impact statement under the National Environmental Policy Act is required. This new rule codifies existing policies and does not significantly alter ongoing activities, nor does this rule constitute a new use of the property.

E. Paperwork Reduction Act

The Army has determined that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

F. Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights)

The Army has determined that E.O. 12630 does not apply because the rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB).

H. Executive Order 13045 (Protection of Children from Environmental Health Risk and Safety Risks)

The Army has determined that according to the criteria defined in Executive Order 13045, the requirements of that Order do not apply to this rule.

I. Executive Order 13132 (Federalism)

The Army has determined that, according to the criteria defined in Executive Order 13132, the requirements of that Order do not apply to this rule because the rule will not have a substantial effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

J. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule is considered an EO 13771 deregulatory action. Details on the estimated cost savings can be found in the "expected cost savings" section of this rule.

List of Subjects in 32 CFR Part 553

Armed forces, Armed forces reserves, Cemeteries, Government property, Military personnel, Monuments and memorials, Veterans.

For the reasons stated in the preamble, the Department of the Army amends 32 CFR part 553 to read as follows:

PART 553—ARMY CEMETERIES

1. The authority citation for 32 CFR part 553 is revised to read as follows:

Authority: 10 U.S.C. 985, 1128, 1481, 1482, 3013, 4721–4726; 24 U.S.C. 295a, 412; 38 U.S.C. 2402 note, 2409–2411, 2413; 40 U.S.C. 9102; and Pub. L. 93-43, 87 Stat. 75.

2. The heading for part 553 is revised to read as set forth above.

§§ 553.1 through 553.35 [Designated as Subpart A]

3. Designate §§ 553.1 through 553.35 as subpart A and add a heading for subpart A to read as

follows:

Subpart A—Army National Military Cemeteries

§ 553.10 [Amended]

4. Amend § 553.10 by removing “pursuant to § 553.19(i)” and adding in its place “pursuant to § 553.19(h)” in paragraph (c).

5. Section 553.12 is amended by:

- a. Adding “and” at the end of paragraph (b)(4)(iv).
- b. Removing “; and” and adding a period in its place in paragraph (b)(4)(v).
- c. Adding paragraph (b)(5).

The addition reads as follows:

§ 553.12 Eligibility for interment in Arlington National Cemetery.

* * * * *

(b) * * *

(5) A minor child or permanently dependent child of a primary eligible person who is or will be interred in Arlington National Cemetery.

§ 553.28 [Amended]

6. Amend § 553.28 by removing “is” and adding in its place “may be approved at the discretion of the Executive Director, and are” in paragraph (a).

7. Add subpart B to read as follows:

Subpart B—Army Post Cemeteries

Sec.

553.36 Definitions.

553.37 Purpose.

553.38 Statutory authorities.

553.39 Scope and applicability.

553.40 Assignment of gravesites or niches.

553.41 Proof of eligibility.

553.42 General rules governing eligibility for interment or inurnment in Army Post Cemeteries.

553.43 Eligibility for interment and inurnment in Army Post Cemeteries.

553.44 Eligibility for interment and inurnment in the West Point Post Cemetery.

553.45 Eligibility for interment in U.S. Disciplinary Barracks Cemetery at Fort Leavenworth.

553.46 Ineligibility for interment, inurnment or memorialization in an Army Post Cemetery.

553.47 Prohibition of interment, inurnment or memorialization in an Army Cemetery of persons who have committed certain crimes.

553.48 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

553.49 Exceptions to policies for interment or inurnment at Army Post Cemeteries.

Subpart B—Army Post Cemeteries

§ 553.36 Definitions.

As used in this subpart, the following terms have these meanings:

Active duty. Full-time duty in the active military service of the United States.

(1) This includes:

(i) Active Reserve component duty performed pursuant to title 10, United States Code.

(ii) Service as a cadet or midshipman currently on the rolls at the U.S. Military, U.S.

Naval, U.S. Air Force, or U.S. Coast Guard Academies.

(iii) Active duty for operational support.

(2) This does not include:

(i) Full-time duty performed under title 32, United States Code.

(ii) Active duty for training, initial entry training, annual training duty, or inactive-duty training for members of the Reserve components.

Active duty for operational support (formerly active duty for special work). A tour of active duty for Reserve personnel authorized from military or Reserve personnel appropriations for work on Active component or Reserve component programs. The purpose of active duty for

operational support is to provide the necessary skilled manpower assets to support existing or emerging requirements and may include training.

Active duty for training. A category of active duty used to provide structured individual and/or unit training, including on-the-job training, or educational courses to Reserve component members. The active duty for training category includes annual training, initial active duty for training, or any other training duty.

Annual training. The minimum period of active duty for training that Reserve members must perform each year to satisfy the training requirements associated with their Reserve component assignment.

Armed Forces. The U.S. Army, Navy, Marine Corps, Coast Guard, Air Force and their Reserve components.

Army Post Cemeteries. Army Post Cemeteries consist of the 26 cemeteries on active Army installations, on Army reserve complexes, and on former Army installations or inactive posts. Army National Military Cemeteries are not included in Post Cemeteries. The West Point Cemetery is considered an Army Post Cemetery but has separate eligibility standards due to its unique stature. In addition to the 26 Post Cemeteries, there are 3 Apache Native American Prisoner of War Cemeteries on Fort Sill, Oklahoma and 5 World War II German and Italian Prisoner of War Cemeteries on four Army installations which are closed for interments but for which the Army bears responsibilities. Finally, there is the U.S. Army Disciplinary Barracks Cemetery at Fort Leavenworth used for interring the unclaimed remains of those who die while incarcerated by the United States Military. Unlike the other Army cemeteries which honor the Nation's veterans, this cemetery has unique eligibility standards due to the characterization of service of those criminally incarcerated.

Cemetery Responsible Official. An appointed official who serves as the primary point of contact and responsible official for all matters relating to the operation maintenance and administration of an Army cemetery. The appointee must be a U.S. Federal Government employee, DA civilian or military member and appointed on orders by the appropriate garrison commander or comparable official.

Child, minor child, permanently dependent child, unmarried adult child—(1) Child. (i) Natural child of a primarily eligible person, born in wedlock;

- (ii) Natural child of a female primarily eligible person, born out of wedlock;
- (iii) Natural child of a male primarily eligible person, who was born out of wedlock and:
 - (A) Has been acknowledged in a writing signed by the male primarily eligible person;
 - (B) Has been judicially determined to be the male primarily eligible person's child;
 - (C) Whom the male primarily eligible person has been judicially ordered to support; or
 - (D) Has been otherwise proven, by evidence satisfactory to the Executive Director, to be the child of the male primarily eligible person;
- (iv) Adopted child of a primarily eligible person; or
- (v) Stepchild who was part of the primarily eligible person's household at the time of death of the individual who is to be interred or inurned.

(2) Minor child. A child of the primarily eligible person who:

- (i) Is unmarried;
- (ii) Has no dependents; and
- (iii) Is under the age of twenty-one years, or is under the age of twenty-three years and is taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(3) Permanently dependent child. A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is permanently and fully dependent on one or both of the child's parents because of a physical or mental disability incurred before attaining the age of twenty-one years or before the age of twenty-three years while taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(4) Unmarried adult child. A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Has attained the age of twenty-one years.

Close relative. The spouse, parents, adult brothers and sisters, adult natural children, adult stepchildren, and adult adopted children of a decedent.

Derivatively eligible person. Any person who is entitled to interment or inurnment solely based on his or her relationship to a primarily eligible person, as set forth in §§ 553.43 through 553.45.

Executive Director. The person charged by the Secretary of the Army to serve as the functional proponent for policies and procedures pertaining to the administration, operation, and maintenance of all military cemeteries under the jurisdiction of the Army.

Federal capital crime. An offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

Former spouse. See spouse.

Government. The U.S. Government and its agencies and instrumentalities.

Inactive-duty training. (1) Duty prescribed for members of the Reserve components by the Secretary concerned under 37 U.S.C. 206 or any other provision of law.

(2) Special additional duties authorized for members of the Reserve components by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

(3) In the case of a member of the Army National Guard or Air National Guard of any State, duty (other than full-time duty) under 32 U.S.C. 316, 502, 503, 504 or 505 or the prior corresponding provisions of law.

(4) This term does not include:

- (i) Work or study performed in connection with correspondence courses;
- (ii) Attendance at an educational institution in an inactive status; or
- (iii) Duty performed as a temporary member of the Coast Guard Reserve.

Interment. The ground burial of casketed or cremated human remains.

Inurnment. The placement of cremated human remains in a niche.

Media. Individuals and agencies that print, broadcast, or gather and transmit news, and their reporters, photographers, and employees.

Minor child. See child.

Niche. An above ground space constructed specifically for the placement of cremated human remains.

Parent. A natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year stood in loco parentis, or was granted legal custody by a court decree or statutory provision.

Permanently dependent child. See child.

Person authorized to direct disposition. The person primarily entitled to direct disposition of human remains and who elects to exercise that entitlement. Determination of such entitlement shall be made in accordance with applicable law and regulations.

Personal representative. A person who has legal authority to act on behalf of another through applicable law, order, and regulation.

Primarily eligible person. Any person who is entitled to interment or inurnment based on his or her service as specified in §§ 553.39 through 553.41.

Primary next of kin. (1) In the absence of a valid written document from the decedent identifying the primary next of kin, the order of precedence for designating a decedent's primary next of kin is as follows:

- (i) Spouse, even if a minor;
- (ii) Children;
- (iii) Parents;
- (iv) Siblings, to include half-blood and those acquired through adoption;
- (v) Grandparents; and
- (vi) Other next of kin, in order of relationship to the decedent as determined by the laws of the decedent's state of domicile.

(2) Absent a court order or written document from the deceased, the precedence of next of kin with equal relationships to the decedent is governed by seniority (age), older having higher

priority than younger. Equal relationship situations include those involving divorced parents of the decedent, children of the decedent, and siblings of the decedent.

Reserve component. The Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the Army National Guard of the United States, and the Air National Guard of the United States.

Spouse, former spouse, subsequently remarried spouse--(1) Spouse. A person who is legally married to another person.

(2) Former spouse. A person who was legally married to another person at one time but was not legally married to that person at the time of one of their deaths.

(3) Subsequently remarried spouse. A derivatively eligible spouse who was married to the primarily eligible person at the time of the primarily eligible person's death and who subsequently remarried another person.

State capital crime. Under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.

Subsequently recovered remains. Additional remains belonging to the decedent that are recovered or identified after the decedent's interment or inurnment.

Subsequently remarried spouse. See spouse.

Subversive activity. Actions constituting subversive activity are those defined in applicable provisions of Federal law.

Unmarried adult child. See child.

Veteran. A person who served in the U.S. Armed Forces and who was discharged or released under honorable conditions.

§ 553.37 Purpose.

This subpart specifies the eligibility for interment and inurnment in the twenty-five Army Post Cemeteries, the West Point Post Cemetery, NY and the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth, KS.

§ 553.38 Statutory authorities.

The statutory authorities for this subpart are Public Law 93-43 Stat 87, 10 U.S.C. 985, 1481, 1482, 3013, and 38 U.S.C. 2411.

§ 553.39 Scope and applicability.

(a) Scope. The development, maintenance, administration, and operation of the Army Post Cemeteries are governed by this subpart, Army Regulation 290-5, and Department of the Army Pamphlet 290-5. The development, maintenance, administration, and operation of Army National Military Cemeteries are not covered by this subpart.

(b) Applicability. This subpart is applicable to all persons seeking interment or inurnment in Army Post Cemeteries.

§ 553.40 Assignment of gravesites or niches.

(a) All eligible persons will be assigned gravesites or niches without discrimination as to race, color, sex, religion, age, or national origin and without preference to military grade or rank.

(b) Army Cemeteries will enforce a one-gravesite-per-family policy. Once the initial interment or inurnment is made in a gravesite or niche, each additional interment or inurnment of eligible persons must be made in the same gravesite or niche, except as noted in paragraph (f) of this section. This includes multiple primarily eligible persons if they are married to each other.

(c) A gravesite reservation will be honored if the gravesite was properly reserved before May 1, 1975.

(d) The commander responsible for an Army Cemetery may cancel a gravesite reservation:

- (1) Upon determination that a derivatively eligible spouse has remarried;
- (2) Upon determination that the remains of the person having the gravesite reservation have been buried elsewhere or otherwise disposed of;
- (3) Upon determination that the person having the gravesite reservation desires to or will be interred in the same gravesite with the predeceased, and doing so is feasible; or
- (4) Upon determination that the person having the gravesite reservation would be 120 years of age and there is no record of correspondence with the person having the gravesite reservation within the last two decades.

(e) In cases of reservations where more than one gravesite was reserved (on the basis of the veteran's eligibility at the time the reservation was made), the gravesite reservations will be honored only if the decedents continue to meet the eligibility criteria for interment in Army Post Cemeteries that is in effect at the time of need, and the reserved gravesite is available.

(f) Gravesites or niches shall not be reserved or assigned prior to the time of need.

(g) The selection of gravesites and niches is the responsibility of the Cemetery Responsible Official. The selection of specific gravesites or niches by the family or other representatives of the deceased at any time is prohibited.

§ 553.41 Proof of eligibility.

(a) The personal representative or primary next of kin is responsible for providing appropriate documentation to verify the decedent's eligibility for interment or inurnment.

(b) The personal representative or primary next of kin must certify in writing that the decedent is not prohibited from interment or inurnment under § 553.46 because he or she has not

committed or has not been convicted of a Federal or State capital crime or is not a convicted Tier III sex offender.

(c) For service members who die on active duty, a statement of honorable service from a general court martial convening authority is required. If the certificate of honorable service cannot be granted, the service member is ineligible for interment or inurnment pursuant to § 553.46(b).

(d) When applicable, the following documents are required:

- (1) Death certificate;
- (2) Proof of eligibility as required by paragraphs (e) through (g) of this section;
- (3) Any additional documentation to establish the decedent's eligibility (e.g., marriage certificate, birth certificate, waivers, statements that the decedent had no children);
- (4) Burial agreement;
- (5) A certificate of cremation or notarized statement attesting to the authenticity of the cremated human remains and that 100% of the cremated remains received from the crematorium are present. The Cemetery Responsible Official may, however, allow a portion of the cremated remains to be removed by the crematorium for the sole purpose of producing commemorative items.

(6) Any other document as required by the Cemetery Responsible Official.

(e) The following documents may be used to establish the eligibility of a primarily eligible person:

- (1) DD Form 214 (issued by all military services since January 1, 1950), Certificate of Release or Discharge from Active Duty or any other DD Form that shows service or discharge information);

(2) WD AGO 53, 55 or 53–55, Enlisted Record and Report of Separation Honorable Discharge;

(3) WD AGO 53–98, Military Record and Report of Separation Certificate of Service or any other WD AGO / AGO Form that shows service or discharge information;

(4) NGB 22, Report of Separation and Record of Service, Departments of the Army and the Air Force, National Guard Bureau (must indicate a minimum of 20 years total service for pay);

(5) ADJ 545, Discharge Certificate or Army DS ODF, Honorable Discharge from the United States Army;

(6) Bureau of Investigation No. 6, 53 or 118, Discharge Certificate or Bureau of Investigation No. 213, Discharge from U.S. Naval Reserve Force;

(7) VA Adjudication 545, Summary of Record of Active Service or any other VA / GSA / NAR / NA Form that shows service or discharge information;

(8) NAVPERS–553, Notice of Separation from U.S. Naval Service;

(9) NAVMC 70–PD, Honorable Discharge, U.S. Marine Corps or any other NAVPERS / NAVCG / NAVMC / NMC / Form No. 6 U.S.N. / Navy (no number) Form that shows service or discharge information; or

(10) DD Form 1300, Report of Casualty (required in the case of death of an active duty service member).

(f) In addition to the documents otherwise required by this section, a request for interment or inurnment of a subsequently remarried spouse must be accompanied by:

(1) A notarized statement from the new spouse of the subsequently remarried spouse agreeing to the interment or inurnment and relinquishing any claim for interment or inurnment in

the same gravesite or niche.

(2) Notarized statement(s) from all of the children from the prior marriage agreeing to the interment or inurnment of their parents in the same gravesite or niche.

(g) In addition to the documents otherwise required by this section, a request for interment or inurnment of a permanently dependent child must be accompanied by:

(1) A notarized statement as to the marital status and degree of dependency of the decedent from an individual with direct knowledge; and

(2) A physician's statement regarding the nature and duration of the physical or mental disability; and

(3) A statement from someone with direct knowledge demonstrating the following factors:

(i) The deceased lived most of his or her adult life with one or either parents, one or both of whom are otherwise eligible for interment; and

(ii) The decedent's children, siblings, or other family members, other than the eligible parent, waive any derivative claim to be interred at the Army Post Cemetery in question, in accordance with DA Form 2386 (Agreement for Interment).

(h) Veterans or primary next of kin of deceased veterans may obtain copies of their military records by writing to the National Personnel Records Center, Attention: Military Personnel Records, 1 Archives Drive, St. Louis, Missouri 63138 or using their website: <http://www.archives.gov/veterans/>. All others may request a record by completing and submitting Standard Form 180.

(i) The burden of proving eligibility lies with the party who requests the burial. Commanders of these cemeteries or their Cemetery Responsible Officials will determine whether

the submitted evidence is sufficient to support a finding of eligibility.

§ 553.42 General rules governing eligibility for interment or inurnment in Army Post Cemeteries.

(a) Only those persons who meet the criteria of § 553.43 or are granted an exception to policy pursuant to § 553.49 may be interred in the twenty-five Army Post Cemeteries. Only those persons who meet the criteria of § 553.44 or are granted an exception to policy pursuant to § 553.49 may be interred or inurned in the West Point Cemetery. Only those persons who meet the criteria of § 553.45 may be interred in the U.S. Disciplinary Barracks Cemetery.

(b) Derivative eligibility for interment or inurnment may be established only through a decedent's connection to a primarily eligible person and not to another derivatively eligible person.

(c) No veteran is eligible for interment, inurnment, or memorialization in an Army Post Cemetery (except for the U.S. Disciplinary Cemetery) unless the veteran's last period of active duty ended with an honorable discharge. A general discharge under honorable conditions is not sufficient for interment, inurnment or memorialization in an Army Post Cemetery.

(d) For purposes of determining whether a service member has received an honorable discharge, final determinations regarding discharges made in accordance with procedures established by chapter 79 of title 10, United States Code, will be considered authoritative.

(e) The Executive Director has the authority to act on requests for exceptions to the provisions of the interment, inurnment, and memorialization eligibility policies contained in this subpart. The Executive Director may delegate this authority on such terms deemed appropriate.

(f) Individuals who do not qualify as a primarily eligible person or a derivatively eligible person, but who are granted an exception to policy to be interred or inurned pursuant to § 553.49

in a new gravesite or niche, will be treated as a primarily eligible person for purposes of this subpart.

(g) Notwithstanding any other section in this subpart, memorialization with an individual memorial marker, interment, or inurnment in an Army Post Cemetery is prohibited if there is a gravesite, niche, or individual memorial marker for the decedent in any other Government-operated cemetery or the Government has provided an individual grave marker, individual memorial marker or niche cover for placement in a private cemetery.

§ 553.43 Eligibility for interment and inurnment in Army Post Cemeteries.

Only those who qualify as a primarily eligible person or a derivatively eligible person are eligible for interment and inurnment in Army Post Cemeteries (except for the West Point Cemetery), unless otherwise prohibited as provided for in §§ 553.46 through 553.48, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) Primarily eligible persons. The following are primarily eligible persons for purposes of interment:

(1) Any service member who dies on active duty in the U.S. Armed Forces (except those service members serving on active duty for training only), if the General Courts Martial Convening Authority grants a certificate of honorable service.

(2) Any veteran retired from a Reserve component who served a period of active duty (other than for training), is carried on the official retired list, and is entitled to receive military retired pay.

(3) Any veteran retired from active military service and entitled to receive military retired pay.

(b) Derivatively eligible persons. The following individuals are derivatively eligible persons for purposes of interment who may be interred if space is available in the gravesite of the primarily eligible person:

(1) The spouse of a primarily eligible person who is or will be interred in an Army Post Cemetery in the same grave as the spouse. A former spouse of a primarily eligible person is not eligible for interment in an Army Post Cemetery under this section.

(2) A subsequently remarried spouse of a primarily eligible person who is remarried at the time of need, provided that there are no children from any subsequent marriage; that all children from the prior marriage to the primarily eligible person agree to the interment and relinquish any claim for interment in the same gravesite in a notarized statement(s); and that the new spouse, if still living and married to the subsequently remarried spouse, agrees to the interment and relinquishes any claim for interment. The Cemetery Responsible Official may cancel the subsequently remarried spouse's gravesite reservation, if any, consistent with § 553.40, and place the subsequently remarried spouse's remains in the same gravesite as the primarily eligible person.

(3) The spouse of an active duty service member or an eligible veteran, who was:

(i) Lost or buried at sea, temporarily interred overseas due to action by the Government, or officially determined to be missing in action;

(ii) Buried in a U.S. military cemetery maintained by the American Battle Monuments Commission; or

(iii) Interred in Arlington National Cemetery as part of a group burial (the derivatively eligible spouse may not be buried in the group burial gravesite) and the active duty service member does not have a separate individual interment or inurnment location.

(4) A minor child or permanently dependent adult child of a primarily eligible person who is or will be interred in an Army Post Cemetery.

(5) The parents of a minor child or a permanently dependent adult child, whose remains were interred in an Army Post Cemetery based on the eligibility of a parent at the time of the child's death, unless eligibility of a parent is lost through divorce from the primarily eligible parent.

§ 553.44 Eligibility for interment and inurnment in the West Point Post Cemetery.

The following persons are eligible for interment and inurnment in the West Point Post Cemetery, unless otherwise prohibited as provided for in §§ 553.46 through 553.48, provided that the last period of active duty of the service member or veteran ended with an honorable discharge or characterization of honorable service for active duty deaths.

(a) Primarily eligible persons for interment or inurnment. The following are primarily eligible persons for purposes of interment or inurnment:

(1) A graduate of the USMA, provided the individual was a U.S. citizen, both as a cadet and at the time of death, and whose military service fulfilled one of the following criteria.

(i) The graduate's service in the Armed Forces of the United States, if any, terminated honorably.

(ii) The graduate's service in wartime in the Armed Forces of a nation that was allied with the United States during the war terminated honorably.

(2) Members of the Armed Forces of the United States, including USMA cadets, who were on active duty at the USMA at time of death and their derivatively eligible person dependents who may have died while the service member was on active duty at the USMA.

(3) Members of the Armed Forces of the United States who were on active duty at the

USMA at time of retirement.

(4) Members of the Armed Forces of the United States whose last active duty station prior to retirement for physical disability was the USMA. However, personnel (not otherwise eligible) who are transferred to the Medical Holding Detachment, Keller Army Hospital, for medical boarding or medical disability retirement are not, regardless of length of time, eligible for interment or inurnment in the West Point Cemetery or Columbarium.

(5) Officers appointed as Professors, USMA.

(b) Derivatively eligible persons. Derivatively eligible persons are those connected to an individual described in paragraph (a) of this section through a relationship described in § 553.43(b). Such individuals may be interred or inurned if space is available in the primarily eligible person's gravesite or niche.

(c) Temporary restrictions. The Secretary of the Army or his designee may, in special circumstances, impose temporary restrictions on the eligibility standards for the USMA cemetery. If temporary restrictions are imposed, they will be reviewed annually to ensure the special circumstances remain valid for retaining the temporary restrictions.

§ 553.45 Eligibility for interment in U.S. Disciplinary Barracks Cemetery at Fort Leavenworth.

(a) Military prisoners who die while in Military custody and are not claimed by the person authorized to direct disposition of remains or other persons legally authorized to dispose of remains are permitted to be interred in the U.S. Disciplinary Barracks Cemetery. All decisions for interment in the U.S.D.B. Cemetery will be made by the Executive Director, ANMC.

(b) Other persons approved by the Executive Director.

§ 553.46 Ineligibility for interment, inurnment or memorialization in an Army Post Cemetery.

The following persons are not eligible for interment, inurnment, or memorialization in an Army Post Cemetery:

(a) A father, mother, brother, sister, or in-law solely on the basis of his or her relationship to a primarily eligible person, even though the individual is:

- (1) Dependent on the primarily eligible person for support; or
- (2) A member of the primarily eligible person's household.

(b) Except for the U.S. Disciplinary Barracks Cemetery in § 553.45, a person whose last period of service was not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal), regardless of whether the person:

- (1) Received any other veterans' benefits; or
- (2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the U.S. Armed Forces, but has not yet entered on active duty.

(d) A former spouse whose marriage to the primarily eligible person ended in divorce.

(e) A spouse who predeceases the primarily eligible person and is interred or inurned in a location other than an Army Cemetery, and the primarily eligible person remarries.

(f) A divorced spouse of a primarily eligible person or the service-connected parent when the divorced spouse has a child interred or inurned in an Army Cemetery under the child's derivative eligibility.

(g) Otherwise derivatively eligible persons, such as a spouse or minor child, if the

primarily eligible person was not or will not be interred or inurned at an Army Cemetery.

(h) A person convicted in a Federal court or by a court-martial of any offense involving subversive activity or an offense described in 18 U.S.C. 1751 (except for military prisoners at the U.S. Disciplinary Barracks Cemetery).

(i) A service member who dies while on active duty, if the first General Courts Martial Convening Authority in the service member's chain of command determines that there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a separation or discharge not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal) being imposed, but for the death of the service member.

(j) If animal remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or similar incident, and such remains cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but the identity of the animal remains shall not be inscribed or identified on a niche, marker, headstone, or otherwise.

§ 553.47 Prohibition of interment, inurnment or memorialization in an Army Cemetery of persons who have committed certain crimes.

(a) Prohibition. Notwithstanding §§ 553.43 through 553.45, and pursuant to 10 U.S.C. 985 and 38 U.S.C. 2411, the interment or inurnment in an Army Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Executive Director by the Attorney General of the United States, prior to his or her interment or inurnment as a person who has been convicted

of a Federal capital crime and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) Any person identified in writing to the Executive Director by an appropriate State official, prior to his or her interment or inurnment as a person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of the State).

(3) Any person found under procedures specified in § 553.48 to have committed a Federal or State capital crime, but who has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(4) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment or inurnment as a person who has been convicted of a Federal or State crime causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act, who for such crime is sentenced to a minimum of life imprisonment and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, as the case may be).

(b) Notice. The Executive Director is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) Confirmation of person's eligibility. (1) If notice has not been received, but the Executive Director has reason to believe that the person may have been convicted of a Federal capital crime or a State capital crime, the Executive Director shall seek written confirmation

from:

(i) The Attorney General of the United States, with respect to a suspected Federal capital crime; or

(ii) An appropriate State official, with respect to a suspected State capital crime.

(2) The Executive Director will defer the decision on whether to inter, inurn, or memorialize a decedent until a written response is received.

(d) Due diligence. Army Post Cemetery Superintendents and Commanders who have cemeteries for which they are responsible will make every effort to determine if the decedent is ineligible in accordance with 10 U.S.C. 985 and 38 U.S.C. 2411. For those determined ineligible due to the provisions of these sections, commanders will submit their determinations in writing to the Executive Director for validation.

§ 553.48 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

(a) Preliminary inquiry. If the Executive Director has reason to believe that a decedent may have committed a Federal capital crime or a State capital crime but has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the Executive Director shall submit the issue to the Army General Counsel. The Army General Counsel or his or her designee shall initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) Decision after preliminary inquiry. If, after conducting the preliminary inquiry described in paragraph (a) of this section, the Army General Counsel or designee determines that credible evidence exists suggesting the decedent may have committed a Federal capital crime or

State capital crime, then further proceedings under this section are warranted to determine whether the decedent committed such crime. Consequently the Army General Counsel or his or her designee shall present the personal representative with a written notification of such preliminary determination and a dated, written notice of the personal representative's procedural options.

(c) Notice and procedural options. The notice of procedural options shall indicate that, within fifteen days, the personal representative may:

- (1) Request a hearing;
- (2) Withdraw the request for interment, inurnment, or memorialization; or
- (3) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn.

(d) Time computation. The fifteen-day time period begins on the calendar day immediately following the earlier of the day the notice of procedural options is delivered in person to the personal representative or is sent by U.S. registered mail or, if available, by electronic means to the personal representative. It ends at midnight on the fifteenth day. The period includes weekends and holidays.

(e) Hearing. The purpose of the hearing is to allow the personal representative to present additional information regarding whether the decedent committed a Federal capital crime or a State capital crime. In lieu of making a personal appearance at the hearing, the personal representative may submit relevant documents for consideration.

(1) If a hearing is requested, the Army General Counsel or his or her designee shall conduct the hearing.

(2) The hearing shall be conducted in an informal manner.

(3) The rules of evidence shall not apply.

(4) The personal representative and witnesses may appear, at no expense to the Government, and shall, at the discretion of the hearing officer, testify under oath. Oaths must be administered by a person who possesses the legal authority to administer oaths.

(5) The Army General Counsel or designee shall consider any and all relevant information obtained.

(6) The hearing shall be appropriately recorded. Upon request, a copy of the record shall be provided to the personal representative.

(f) Final determination. After considering the hearing officer's report, the opinion of the Army General Counsel or his or her designee, and any additional information submitted by the personal representative, the Secretary of the Army or his or her designee shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(1) The determination shall be based on evidence that supports or undermines a conclusion that the decedent's actions satisfied the elements of the crime as established by the law of the jurisdiction in which the decedent would have been prosecuted.

(2) If an affirmative defense is offered by the decedent's personal representative, a determination as to whether the defense was met shall be made according to the law of the jurisdiction in which the decedent would have been prosecuted.

(3) Mitigating evidence shall not be considered.

(4) The opinion of the local, State, or Federal prosecutor as to whether he or she would have brought charges against the decedent had the decedent been available is relevant but not binding and shall be given no more weight than other facts presented.

(g) Notice of decision. The Executive Director shall provide written notification of the Secretary's decision to the personal representative.

§ 553.49 Exceptions to policies for interment or inurnment at Army Post Cemeteries.

(a) Requests for exceptions to policy will be made to the Executive Director, Army National Military Cemeteries.

(b) Eligibility standards for interment and inurnment are based on honorable military service. Exceptions to the eligibility standards are rarely granted. When granted, exceptions are for those persons who have made significant contributions that directly and substantially benefited the U.S. military.

(c) Requests for an exception to the interment or inurnment eligibility policies shall be considered only after the individual's death.

(d) Procedures for submitting requests for exceptions to policy for interment and inurnment will be established by the Executive Director, Army National Military Cemeteries.

Brenda S. Bowen,
Army Federal Register Liaison Officer.
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